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SUPREME COURT, U. S.

No. 401

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

CHEMICAL BANK NEW YORK TRUST COMPANY, Trustee, Mortgagee,

Petitioner,

v.

Steamship WESTHAMPTON (Formerly Steamship MONTAUK POINT), Her Engines, Boilers, etc.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION OF THE GOVERNMENT OF THE BUNDESREPUBLIK DEUTSCHLAND FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE

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MOTION OF THE GOVERNMENT OF THE BUNDESREPUBLIK DEUTSCHLAND FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Government of the Bundesrepublik Deutschland (Federal Republic of Germany) prays that this court receive the annexed brief amicus in support of the petition, dated July 29, 1966, of Chemical Bank New York Trust Company herein for a writ of certiorari to review the decrees of April 5, 1965 and May 3, 1966 of the United States Court of Appeals for the Fourth Circuit. The attorneys for all parties herein, other than petitioner, have declined to consent to the filing of the annexed brief amicus.

The interest of The Government of the Federal Republic of Germany lies in the adverse effect that these decrees have had on United States-German commercial relations.

German investors in the United States are seriously alarmed when well established administrative rulings and

procedures upon which they relied are judicially overturned to the sole detriment of German nationals without the issue being passed upon by the highest appellate court in the Federal system.

This aspect of the case is of substantial general importance to the governments and citizens of both countries and The Government of the Federal Republic of Germany respectfully seeks permission to present it to this court.

Respectfully submitted,

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Respondent.

BRIEF OF THE GOVERNMENT OF THE BUNDESREPUBLIK DEUTSCHLAND AS AMICUS CURIAE

Statement

The Government of the Federal Republic of Germany prays that a writ of certiorari be issued to review the decrees of April 5, 1965 and May 3, 1966 of the United States Court of Appeals for the Fourth Circuit.

The required statements as to the Opinions and Orders Below, the Jurisdiction of this Court, the Questions Presented, the Statutes Involved, the Statement of the Case and the Reasons for Granting the Writ, as the same appear in the Petition dated July 29, 1966 for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit filed herein on the same date, are hereby adopted by The Government of the Federal Republic of Germany and incorporated herein.

One More Reason for Granting the Writ

This case is of substantial general importance in a manner which has not previously been noted.

The decision below with its prompt legislative reversal as to all ship mortgages except three held by German nationals has already had an adverse effect on United States-German commercial relations. German investors in the United States are shaken when well established administrative rulings and procedures upon which they previously relied are judicially overturned. Such unhappy result coupled with clear evidence that the Congress favored, except as to some mortgages held by German nationals, the pre-established administrative procedures and in effect reversed the court below makes it imperative that the issues in this case be passed upon by this court.

In this case there is no doubt that the preferred ship mortgage lien on the S.S. Westhampton was created and a bond issued thereunder in accordance with well established and generally accepted rulings and procedures of the Department of Commerce (Maritime Administration). The mortgage lien in that form was also recorded with, and accepted by, the Bureau of Customs, the administrative agency charged with that function. To everyone's surprise, the decision below of the Court of Appeals held that such established rulings and procedures were, and have always been, erroneous interpretations of the Ship Mortgage Act, 1920, as amended and the Shipping Act, 1916, as amended.

There is likewise no doubt that, because such Court of Appeals decision threatened countless ship mortgages with invalidity, the decision was promptly and totally reversed in substance by the enactment of P. L. 89-346 (79 Stat. 1305 (1965)). To such statute was added an exception (see the last paragraph of Section 4 of P. L. 89-346) withdrawing its effect to an ambiguous extent from three ship mortgages under which bonds were issued to three

German nationals (see the Petition herein p. 8) and guaranteed in whole or in part by other German nationals. Although the grounds stated for its decision in April 1965 were not fully briefed or argued on the original presentation of the appeal, the Court of Appeals refused to reconsider the case *en banc* with full briefing and argument with respect to (i) the original reasoning of the court, (ii) the effect thereon of P. L. 89-346 and (iii) the consequence of the qualification of petitioner Chemical Bank New York Trust Company as mortgage trustee under the statute. There is also no doubt that the rationale of the Court of Appeal's decision is based on several obvious errors of law as to the legal effect of ship mortgages (see the Petition herein p. 22) and as to the effect of the ownership of stock in a corporation owning a United States flag ship (see the Petition herein pp. 22-23).

German investors and entrepreneurs realize that an independent judiciary may well—and must have the authority to—overturn rulings and procedures of administrative agencies, no matter of what long standing or general acceptance and in spite of the reliance thereon by German investors. Yet when a judicial act overturning such administrative rulings and procedures is then legislatively reversed, it is impossible coherently to explain to such German investors why a decision of a Court of Appeals is allowed to remain effective only as to them—without the case being reviewed by the Supreme Court of the United States. This inability of German investors to understand is augmented by the fact that several United States courts have accepted without question mortgages identical in formality with the one held invalid below.

To repeat for emphasis, this case affects not only the economic well-being of the three German shipyards involved but also United States-German commercial relationships in general, a matter of substantial general importance to both countries. German investors will not, unless this case be reviewed by this Court, continue to have the same

confidence in making investments in, or dealing for credit with, the United States pursuant to administrative rulings and procedures.

Wherefore, it is respectfully urged by The Government of the Federal Republic of Germany that the writ of certiorari as prayed for should be issued and the decision of the court below reviewed by this Court.

September 30, 1966

Respectfully submitted,

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